

Application No. 10/553,363
Appeal 2011-003703
AMENDMENT of August 23, 2011
Response to Decision on Appeal of June 23, 2011

REMARKS/ARGUMENT

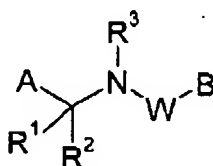
This is in response to the Decision on Appeal of June 23, 2011.

Claims 1, 15-17, and 23 are pending in the application with claims 1 and 23 having been currently amended and claims 2-14 and 18-22 canceled.

Claims 1, 15-17, and 23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Foor et al (WO 03/079788; 10/2/03).

Foor et al. disclose compositions for controlling plant diseases caused by fungal plant pathogens comprising:

- (a) a fungicidally effective amount of a compound of Formula (I)



(including all geometric and stereoisomers, N-oxides, and agriculturally suitable salts thereof)

wherein A, B, W, R¹, R², and R³ are as defined in the disclosure; and

- (b) at least one compound selected from the group consisting of

(b1) alkylenebis(dithiocarbamate) fungicides;

(b2) compounds acting at the bc₁ complex of the fungal mitochondrial respiratory electron transfer site;

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(b3) cymoxanil;

(b4) compounds acting at the demethylase enzyme of the sterol biosynthesis pathway;

(b5) morpholine and piperidine compounds that act on the sterol biosynthesis pathway;

(b6) phenylamide fungicides;

(b7) pyrimidinone fungicides;

(b8) phthalimides; and

(b9) fosetyl-aluminum.

Also disclosed are methods for controlling plant diseases caused by fungal plant pathogens that involves applying an effective amount of the combinations described. Also disclosed are certain compounds of Formula (I).

Applicants acknowledge that the Foor et al. reference appears to teach the combination of 2,6-dichloro-N-([3-chloro-5- (trifluoromethyl)-2-pyridinyl] methyl) benzamide and chlorothalonil. The present claims are not simply directed to the combination of pyridylmethylbenzamide compounds and chlorothalonil, but, rather, to a combination of one of these fungicides - 2, 6-dichloro-N-([3-chloro-5- (trifluoromethyl)-2- pyridinyl] methyl) benzamide - also known as fluopicolide - and chlorothalonil in relatively narrow, and specifically defined, ratios. There is no mention of the currently claimed ratios in the art cited by the

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Examiner. It is submitted that nowhere in the reference is there any disclosure of the ratio of the weight of the 2,6-dichloro-N- $\{[3\text{-chloro-5-(trifluoromethyl)-2-pyridinyl] methyl}\}$ benzamide to the weight of the chlorothalonil. The reference is replete with teachings of the ratios of compound (a), i.e. compounds of Formula I, which, *inter alia*, includes 2,6-dichloro-N- $\{[3\text{-chloro-5-(trifluoromethyl)-2-pyridinyl] methyl}\}$ benzamide, to compound (b) (i.e., compounds b1 through b9), but *not one of compounds b1 through b9 includes chlorothalonil*.

Further, the claims all require that the weight ratio of fluopicolide/chlorothalonil be in the range of from 1/20 to 1/2, inclusive.

It is submitted that the present invention is not obvious over Foor et al. It is, and has been, the Applicants' position that they have discovered a combination that clearly exhibits synergism and is neither disclosed nor suggested by the cited art. They have demonstrated this synergism for this combination in Examples 1 and 2 (see, in particular, Tables 3 and 4), using means for determining synergism that is accepted in the art, i.e., the Colby formula, which was published in the journal *Weeds*, 1967, 15, pp. 20-22. The Examiner's attention is directed to U.S. Patent No. 6,753,339 in which the Colby method of determining synergism was also employed to the satisfaction of the Patent Office. Based on the teachings of the cited reference, a skilled artisan would have indeed expected fungicide activity for mixtures of 2, 6-dichloro-N- $\{[3\text{-chloro-5-(trifluoromethyl)-2-pyridinyl] methyl}\}$ benzamide and chlorothalonil, but would not have expected any synergy when associating these compounds in the claimed weight ratios, as

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evidenced by the examples of the present application. Unexpected results have thus been shown for the claimed combination and it logically follows from this that the combination cannot be obvious.

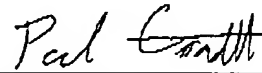
Accordingly, it is requested that the rejection of claims 1, 15-17, and 23 under 35 U.S.C. 103(a) as being unpatentable over Foor et al. be withdrawn.

Applicants have discovered a novel and unobvious combination of fungicides that exhibits a synergistic effect that allows a reduction of the chemical substances spread into the environment and a reduction of the cost of the fungal treatment. Thus, the combination of the present invention enables a reduction in the doses of chemical products spread in the environment in order to control fungal attacks of crops, especially potatoes, vegetables, and lawns, in particular by reducing the doses of the products for application, and increases the number of antifungal products available to farmers for them to find among them the fungicidal agent best suited to their particular use.

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In view of the foregoing, it is submitted that this application is now in condition for allowance. Favorable consideration is requested.

Respectfully submitted,



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